

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience and)	
Necessity, pursuant to Section 8-406.1 of the Illinois)	
Public Utilities Act, and an Order pursuant to Section 8-)	Docket No. 12-0598
503 of the Public Utilities Act, to Construct, Operate and)	
Maintain a New High Voltage Electric Service Line and)	
Related Facilities in the Counties of Adams, Brown,)	
Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton,)	
Macon, Montgomery, Morgan, Moultrie, Pike,)	
Sangamon, Schuyler, Scott and Shelby, Illinois.)	

**REPLY IN SUPPORT OF
AMEREN TRANSMISSION COMPANY OF ILLINOIS' MOTION FOR
ENTRY OF A CASE MANAGEMENT ORDER AND COORDINATED SCHEDULE**

Ameren Transmission Company of Illinois (ATXI) respectfully submits this reply in support of its Motion for Entry of a Case Management Order and Coordinated Schedule (CMO Motion). As the Responses to the Motion show, the parties have a wide variety of proposals, often inconsistent, about the schedule and case management in this proceeding. ATXI's proposed schedule and case management plan, therefore, results in the best balancing of the varied interests of the parties, and should be adopted. In further support of its CMO Motion, ATXI states as follows:

1. On November 30, 2012, ATXI filed its CMO Motion requesting that the Illinois Commerce Commission ("Commission") enter a case management plan and schedule to govern this proceeding. ATXI attached to its CMO Motion a proposed Case Management Order which establishes a case schedule, an efficient discovery process and other procedures that promote certainty, clarity and efficiency in the administration of this proceeding and allow the Commission to enter a final order within the applicable statutory period. As stated in ATXI's CMO Motion, ATXI and Staff have agreed to the case schedule and discovery timelines set forth

therein, and Staff has expressly recommended that ATXI's proposed Case Management Order be adopted in its entirety. (See Staff Resp. (filed Dec. 10, 2012).)

2. Certain parties granted intervention in this proceeding and other putative intervenors (collectively, the Responding Parties) have responded to ATXI's CMO Motion and raised disparate, and at times conflicting, concerns regarding ATXI's proposed Case Management Order, including the case schedule and discovery timelines therein. (See generally Responses filed Dec. 10, 2012.) As discussed below, however, none of those concerns support modification of the Case Management Order or the schedule. In fact, the Responding Parties' divergent views on the issue confirm that ATXI's approach appropriately balances the interests of all parties in light of the required expedited schedule. As such, no modifications are necessary and ATXI's Case Management Order, as supported by Staff, should be entered as proposed. Because they largely overlap, ATXI addresses the Responding Parties' concerns collectively by pertinent section of the proposed Case Management Order.

Case Management Order Section IV – Schedule and Rounds of Testimony

3. The Responding Parties raise various objections to the case schedule set forth in the proposed Case Management Order, and they recommend a gamut of conflicting modifications. For instance, the Nature Conservancy suggests the Staff/intervenor direct testimony filing date be moved a week *earlier* (see Nature Conserv. Resp., ¶ 2), while others suggest the same deadline be *delayed* as late as two weeks, until February 14, 2012 (see City of Champaign Resp., p. 1; Adams Cty. Prop. Owners & Tenant Farmers Resp., ¶ 2; Colfax-Scott Land Preserv. Grp. Resp., ¶¶ 5-6; Moultrie Cty. Prop. Owners Resp., ¶ 3). The Commission should approve the dates comprising the case schedule in the proposed Case Management Order. Given the conflicting proposals of the Responding Parties, the case schedule proposed by ATXI appropriately balances the competing concerns of all parties.

4. With respect to the Staff/intervenor direct testimony filing deadline in particular, the January 31, 2013 date provides ample time (nearly three months) for Staff and intervenors to prepare their direct testimonies, while accommodating several rounds of testimony within the expedited timeframe required by Section 8-406.1 of the Public Utilities Act, 220 ILCS 5/8-406.1. ATXI notes Section 8-406.1 proceedings such as the one at bar typically allow Staff and intervenors approximately 55-60 days to prepare direct testimony. See, e.g., American Trans. Co., LLC, Docket 11-0661; Ameren Ill. Co., Docket 12-0080. The case schedule proposed here, however, permits Staff and intervenors 85 days to prepare that testimony.

5. To accommodate their request for additional time to prepare their direct testimony and for other reasons, some of the Responding Parties also suggest the prefiled testimony in this proceeding be limited to three rounds. (See Colfax-Scott Land Preserv. Grp. Resp., ¶ 1.) Others, in contrast, recommend the typical five rounds, as proposed by ATXI. (See Nature Conserv. Resp., ¶ 1; Tarble Limestone Enters. Resp., p. 2.) The Moultrie County Property Owners suggest a schedule that concludes with ATXI rebuttal and a vaguely explained “cross answering testimony.” (Moultrie Cty. Prop. Owners Resp., ¶ 3.) Still others go so far as to suggest an unprecedented four rounds of testimony—ATXI direct and rebuttal and Staff and intervenor direct and rebuttal—thereby advocating that ATXI be deprived of the opportunity for surrebuttal testimony. (See Adams Cty. Prop. Owners & Tenant Farmers Resp., ¶ 2; Tarble Limestone Enters. Resp., p. 3.) Regarding this latter proposal, it must be emphasized that ATXI has the burden of proof in this proceeding. The filing of surrebuttal testimony by ATXI is consistent with that burden because it allows ATXI to submit final commentary in support of its case. Any proposal that does not provide for this should be rejected. Indeed, the Commission’s Rules of Practice entitle ATXI to such filing. Section 200.570 provides in relevant part, “[a]t hearings in

other proceedings, the petitioner, applicant or complainant, if any, shall open and close.” 83 Ill. Adm. Code § 200.570.

6. Further, Staff and intervenors should be permitted to submit both direct and rebuttal testimony, and ATXI to submit direct, rebuttal and surrebuttal testimony, as is typically the case. Multiple rounds of prefiled testimony allows parties to address concerns raised by other litigants in advance of hearing, and promotes a narrowing of issues and the early resolution of disputes. This, in turn, limits the issues for hearing and, thus, the length of the hearing. It therefore aligns with the expedited nature of this proceeding. Certain Responding Parties recognize this: the Nature Conservancy “expressly supports” ATXI’s proposal in this regard, recognizing “[s]uch an approach will ensure a more complete record for consideration by the Commission and the ALJs, will afford Staff and Intervenors the opportunity to present their positions to the Commission with a fuller understanding of [ATXI’s] positions as well as the positions of the other parties, and will potentially allow for resolution of certain initially-contested issues.” (Nature Conserv. Resp., ¶ 1.) Given the number of parties expected to participate in this proceeding, ATXI submits that, absent rounds of prefiled testimony sufficient to narrow the issues for hearing, it will be necessary to lengthen the time allotted for hearing and post-hearing briefing. Moreover, a case schedule allowing for five rounds of prefiled testimony alleviates any need for a separate filing by landowners identifying their proposed alternate routes, a suggestion offered by the ALJs at the December 3, 2012 prehearing conference. (As discussed below, this suggestion also is problematic.) Five rounds of testimony is the best approach for addressing potential new alternate routes. Staff and intervenors can provide with their direct testimony maps of any alternates routes they are proposing, and identify affected landowners. Shortly after that filing, notice can be issued to any landowners who are not already

participating in the proceeding, but who are affected by any proposed alternate route. Such notice will permit those landowners sufficient time (over four weeks under ATXI's proposed schedule) to submit responsive testimony concurrent with the Staff/intervenor rebuttal testimony filing deadline. Tarble Limestone Enterprises expressly supports ATXI in this regard. (See Tarble Limestone Enters. Resp., p. 2 ("Landowners whose property is in the path of the Primary Route or Alternate Route should not be given any special right to file rebuttal testimony, but rather should be expected to intervene to protect their interests and file testimony at the same time as everyone else.").)

7. Certain of the Responding Parties also recommend that ATXI have less than 28 days to prepare its rebuttal testimony. (See Adams Cty. Prop. Owners & Tenant Farmers Resp., ¶ 3.)¹ (In similar vein, the City of Champaign would reduce ATXI's surrebuttal preparation time to just *four business days* to accommodate its proposed schedule. (See City of Champaign Resp., p. 2 (emphasis added).)) These proposals are untenable. ATXI must be permitted ample time to review Staff and intervenor direct testimony (including review and analysis of potential alternate routes), conduct related discovery and prepare responsive testimony. As of today, approximately 29 parties have sought to intervene, and more are likely. It is not unreasonable to expect most will file testimony and, perhaps, multiple testimonies per party. And it follows, the more testimonies filed, the more discovery required. Again, ATXI bears the burden of proof in this proceeding. Thus, ATXI's rebuttal testimony timeframe must be at least 28 days, as ATXI has proposed. It also is worth noting, while most parties likely will be responding to ATXI's

¹ Inexplicably, the Adams County Property Owners and Tenant Farmers, while at the same time proposing to deny ATXI the opportunity for surrebuttal and to reduce the time for ATXI to prepare rebuttal, propose to shift the dates after ATXI rebuttal *back* one week, thereby reducing without explanation the period of time for preparation of the proposed order and the Commission's final order. (See Adams Cty. Prop. Owners & Tenant Farmers Resp., ¶ 3.) This Responding Party's proposals appear inherently inconsistent. They should be dismissed on this ground alone.

testimony alone, ATXI will be responding to *all* Staff and intervenor testimony. To ensure an efficient and effective proceeding, and to narrow the issues for hearing, ATXI must be afforded sufficient time to do so.

8. As stated, at the December 3, 2012 prehearing conference, the ALJs also suggested a revision to the case schedule—a separate filing, prior to the deadline for Staff and intervenor direct testimony, wherein Staff and intervenors could (pre)identify their proposed alternate routes. It is anticipated this would allow landowners potentially impacted by any proposed alternate route to be identified and permitted the opportunity to participate in the proceeding, to the extent they are not already a party to it. ATXI respectfully submits this suggestion is problematic for several reasons, and it should not be adopted. Most notable are the evidentiary hurdles such a filing would create—would these proposed alternate routes constitute evidence? Would the filing parties be permitted to “change their minds” with respect to those routes and present new routes with their direct testimony? If so, this would effectively moot the purpose of the separate (pre)filing? If not, would it be fair to bind the filing parties to the alternate routes they initially propose? Further, it is unlikely the timing of such separate (pre)filing would afford ATXI and the Commission’s Clerk ample time to identify and notify the potentially affected landowners or Staff and intervenors ample time to respond to the proposed alternate routes in their direct testimony. As discussed above, a case schedule permitting five rounds of testimony alleviates the need for a separate (pre)filing and these associated concerns.

9. In sum, the case schedule set forth in the Case Management Order proposed by ATXI, as supported by Staff, represents the best balance of all of the Responding Parties’ competing interests. It should be adopted as proposed.

Case Management Order Section II – Discovery

10. Several of the Responding Parties take issue with ATXI’s proposed discovery

response periods during the period post filing of Staff and intervenor direct testimony and up to ATXI surrebuttal. They generally argue ATXI is not entitled to a response period of 10 days, but instead should be treated similarly to Staff and intervenors and afforded the same 7-day response time as those parties. (See City of Champaign Resp., p. 1; Colfax-Scott Land Preserv. Grp. Resp., ¶ 3; Moultrie Cty. Prop. Owners Resp., ¶ 2; Tarble Limestone Enters. Resp., p. 3.) What these Responding Parties fail to recognize is that ATXI is *not* similar to Staff and intervenors in this proceeding, especially when it comes to discovery. ATXI has been, and will continue to be, subjected to discovery requests from Staff and the numerous intervenors. There is no limit to the number of data requests ATXI may receive from multiple parties on any given day. Staff and intervenors, on the other hand, likely will receive requests from ATXI alone. As such, the discovery to which those parties respond will necessarily be limited. Moreover, during much of the period between the filing of Staff and intervenor direct testimony and ATXI surrebuttal testimony, ATXI will be preparing testimony (rebuttal or surrebuttal). It is prejudicial to impose upon ATXI shorter deadlines while it is preparing its responsive testimony. Affording ATXI three additional days to respond to discovery fairly recognizes the added discovery burdens ATXI likely will bear during that period. Further, it will ensure discovery proceeds effectively and efficiently throughout the course of this proceeding.

Case Management Order Section I – Form of Pleadings

11. No objections have been presented to this section of ATXI's proposed Case Management Order. It should be adopted as proposed.

Case Management Order Section III – Hearing

12. The Adams County Property Owners and Tenant Farmers generally object to Section III of the proposed Case Management Order, apparently in its entirety, on the basis Rule 200.370 of the Commission's Rules of Practice and Procedure, 83 Ill. Adm. Code § 200.370,

governs discovery, not hearings. (Adams Cty. Prop. Owners & Tenant Farmers Resp., ¶ 4.) They argue the hearing instead should be conducted in accordance with Rules 200.500-710, 83 Ill. Adm. Code §§ 200.500-710. (Id.) ATXI does not dispute those rules govern hearings before the Commission. However, these intervenors ignore that Rule 200.500 also affords the ALJs substantial authority over Commission proceedings, including authority over the conduct of such proceedings and “to ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.” 83 Ill. Adm. Code § 200.500(g). The Adams County Property Owners and Tenant Farmers have provided no substantive basis to reject the efficient procedure outlined in Section III of the proposed Case Management Order, which the ALJs are authorized to impose. This section of the Case Management Order should be adopted as proposed by ATXI.

13. The Nature Conservancy recommends that ATXI should be directed to obtain, at its own cost, and to disseminate to all requesting parties, copies of the transcripts of the evidentiary hearing within five days following conclusion of that hearing. (Nature Conserv. Resp., ¶ 3.) However, it has provided no basis for this recommendation. There simply is no requirement that ATXI assist other litigants in presenting their cases. The Nature Conservancy’s suggestion here should be rejected.

14. For all of these reasons, the Case Management Order ATXI has proposed adequately addresses the (in some cases, conflicting) concerns raised by the Responding Parties. It effectively balances the different interests of the parties, consistent with the expedited schedule required by Section 8-406.1, and should be entered.

WHEREFORE, Ameren Transmission Company of Illinois respectfully requests that the Illinois Commerce Commission grant its CMO Motion and enter the proposed Case Management

Order attached to that motion.

Dated: December 13, 2012

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert Sturtevant

One of their Attorneys

Edward C. Fitzhenry
Matthew R. Tomc
Eric E. Dearmont
AMEREN SERVICES COMPANY
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166
(314) 554-3533
(314) 554-4014 (fax)
efitzhenry@ameren.com
mtomc@ameren.com
edearmont@ameren.com

Mark A. Whitt
Shannon K. Rust
WHITT STURTEVANT LLP
88 East Broad Street, Suite 1590
Columbus, Ohio 43215
(614) 224-3911
whitt@whitt-sturtevant.com
rust@whitt-sturtevant.com

Albert D. Sturtevant
Anne M. Zehr
Rebecca L. Segal
WHITT STURTEVANT LLP
180 N. LaSalle Street, Suite 2001
Chicago, Illinois 60601
(312) 251-3017
sturtevant@whitt-sturtevant.com
zehr@whitt-sturtevant.com
segal@whitt-sturtevant.com

Christopher W. Flynn
Attorney at Law
180 N. LaSalle Street, Suite 2001
Chicago, Illinois 60601
cwflynnlaw@gmail.com

CERTIFICATE OF SERVICE

I, Albert Sturtevant, an attorney, certify that on December 13, 2012, I caused a copy of the foregoing *Reply in Support of Ameren Transmission Company of Illinois' Motion for Entry of a Case Management Order and Coordinated Schedule* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert Sturtevant

Attorney for Ameren Transmission
Company of Illinois